

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2012-02-21-05 / NON-PRECEDENTIAL
ID: P-11-468-H
DATE: FEBRUARY 21, 2012
DISPOSITION: SUSTAINED
TAX TYPE: SALES
APPEAL: NO APPEAL TAKEN

ORDER

The above matter comes on for entry of an order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 10th day of January, 2012, and being fully advised in the premises, the Commission hereby makes the following Findings of Fact and Conclusions of Law and enters the following Order.

PROCEDURAL HISTORY

On June 24, 2011, the protest letter was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*¹ and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.² On June 27, the Court Clerk³ sent a memorandum to the Division requesting the protest file. On June 28, 2011, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Co-Counsel of record for the Division.

On July 1, 2011, the Court Clerk received the protest file from the Division. On July 13, 2011, a letter was mailed to Counsel stating this matter had been assigned to ALJ, Administrative Law Judge, and docketed as Case Number P-11-468-H. The letter also advised Counsel that a Notice of Prehearing Conference would be sent by mail and enclosed a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.⁴

On September 8, 2011, the Notice of Prehearing Conference was mailed to Counsel, setting the prehearing conference for September 29, 2011, at 11:00 a.m. On September 21, 2011, an Agreed Proposed Scheduling Order in lieu of Prehearing Conference was filed with the Court Clerk.

On October 5, 2011, Joint Stipulation of Facts was filed, with Exhibits 1 through 8 attached thereto. On October 10, 2011, the *Motion of PROTESTANT for Summary Disposition*,

¹ OKLA. STAT. ANN. tit. 68, § 201 et seq. (West 2001).

² OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

³ OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (June 25, 1999).

⁴ *Id.*

and Brief in Support was filed with the Court Clerk. On October 17, 2011, at 3:15 p.m. a teleconference was held with Counsel at the request of the Administrative Law Judge. Counsel agreed that this matter was to be submitted on stipulations and briefs pursuant to OKLA. ADMIN. CODE § 710:1-5-38(a) (June 25, 2009) and that the “title” of the Protestant’s pleading would be treated as its Brief-In-Chief (“*Brief*”). On October 18, 2011, a letter was mailed to Counsel confirming the teleconference. On October 18, 2011, a Scheduling Order was issued and mailed to Counsel, as more fully set forth therein.

On November 10, 2011, the *Taxpayer Assistance Division’s Response to Protestant’s Brief-In-Chief* (“*Response*”) was filed with the Court Clerk. On November 21, 2011, the *Reply of PROTESTANT to Response Brief of Taxpayer Assistance Division* (“*Reply*”) was filed with the Court Clerk.

The record in this matter was closed and this case was submitted for decision on December 2, 2011.

JOINT STIPULATION OF FACTS

On October 5, 2011, the parties filed Joint Stipulation of Facts and Exhibits 1 through 8,⁵ as follows, to-wit:

1. Title 51 O.S. § 167, authorizes municipalities to insure, or self-insure, against tort liability, and to provide health and certain other types of insurance to their employees. The statute specifically authorizes municipalities to pool their risks by insuring or self-insuring through cooperative agreements made pursuant to the Interlocal Cooperation Act (“ICA”). 74 O.S. §§ 1001, *et seq.*

2. Pursuant to this authority, in 1977, several Oklahoma cities and towns formed the PROTESTANT, ORIGINAL NAME. Exhibit 1, “Certificate of Transcript,” Office of the Secretary of State and Exhibit 2, “Agreement Establishing the PROTESTANT, ORIGINAL NAME,” are attached hereto and made a part hereof.

3. In 1993, PROTESTANT, ORIGINAL NAME changed its name to PROTESTANT (“PROTESTANT”). Exhibit 3, letter to The Honorable SECRETARY OF STATE, Secretary of State, from REPRESENTATIVE, dated May 28, 1993, file-stamped June 4, 1993, with attachment titled, “Resolution 3-93” filed June 4, 1993 is attached hereto and made a part hereof.

[4.] PROTESTANT is composed solely of cities and towns located within the State of Oklahoma (“PROTESTANT Member Municipalities”). PROTESTANT is governed by the agreement entered into by its Member Municipalities pursuant to the ICA. Exhibit 4, “Agreement Establishing the PROTESTANT,” is attached hereto and made a part hereof.

⁵ The text of the stipulated facts is set out *in haec verba*. “*in haec verba*” (in heek v<<schwa>>r-b<<schwa>>). [Latin] In these same words; verbatim. BLACK’S LAW DICTIONARY (8TH ed. 2004), available at <http://westlaw.com>.

[5.] All activities of PROTESTANT are performed for the benefit and on behalf of PROTESTANT Member Municipalities. All control and supervision of PROTESTANT is vested in PROTESTANT Member Municipalities. The members of PROTESTANT's governing board of trustees are elected by participating PROTESTANT Member Municipalities, and only elected or appointed officers of PROTESTANT Member Municipalities may be trustees. PROTESTANT has no separate financial autonomy, but is solely dependent upon monies of its Member Municipalities. *See* Exhibit 4.

[6.] PROTESTANT has entered into a public contract pursuant to the Oklahoma Public Competitive Bidding Act of 1974 ("PCBA"), 61 O.S. §§ 101, *et seq.*, for the construction of an office building ("the public construction contract"). *See* Exhibit 5 attached hereto and made a part hereof.

[7.] On or about April 25, 2011, PROTESTANT applied to the Oklahoma Tax Commission ("OTC") for sales tax exemption pursuant to 68 O.S. § 1356(10). *See* Exhibit 6 attached hereto and made a part hereof. On or about June 17, 2011, Division notified PROTESTANT the request was denied. Exhibit 7, letter dated June 17, 2011, from OTC EMPLOYEE to RECIPIENT, is attached hereto and made a part hereof.

[8.] On or about June 23, 2011, PROTESTANT properly submitted its request for expedited hearing on the issue of its entitlement to the sales tax exemption provided for in 68 O.S. § 1356(10). *See* Exhibit 8 attached hereto and made a part hereof.

[9.] Division has recognized PROTESTANT as an entity entitled to make purchases exempt from sale tax pursuant to 68 O.S. § 1356(1). At issue in these proceedings is whether PROTESTANT's contractor is entitled to make purchases exempt from sales tax pursuant to 68 O.S. § 1356(10).

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, the Stipulations, and the Exhibits received into evidence, the undersigned finds:

10. On June 17, 2011, the Division issued a Sales Tax Exemption (State Governments) Permit # 655221 to the Protestant, pursuant to Section 1356(1) of Title 68.⁶

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission is vested with jurisdiction over the parties and subject matter of this proceeding.⁷

⁶ OKLA. STAT. ANN. tit. 68, § 1356(1) (West Supp. 2012). The court file contains a copy of the exemption permit, which was forwarded by the Division as part of the protest file on this matter. The Administrative Law Judge is taking judicial notice of the materials contained in the court file to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (June 25, 1999). *See* Exhibit 7. *See also* Notes 14 and 18, *infra*.

⁷ OKLA. STAT. ANN. tit. 68, § 207 (West 2001). *See* OKLA. ADMIN. CODE 710:1-5-38(a) (June 25, 2009).

2. The rules promulgated pursuant to the Administrative Procedures Act are presumed to be valid and binding on the persons they affect and have the force of law.⁸

3. The collection and remittance of sales tax is governed by the Oklahoma Sales Tax Code (“Sales Tax Code”).⁹ The Sales Tax Code¹⁰ levies “upon all sales, not otherwise exempted . . . an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds¹¹ of each sale of . . . tangible personal property. . . .”¹²

4. The Sales Tax Code¹³ in pertinent parts provides exemptions¹⁴ from sales tax on property or services purchased by governmental and nonprofit entities, as follows, to-wit:

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Sale of tangible personal property or services to the United States government or to the State of Oklahoma, any political subdivision of this state or any agency of a political subdivision of this state; *provided, all sales to contractors in connection with the performance of any contract with the United States government, State of Oklahoma or any of its political subdivisions shall not be exempted from the tax levied by Section 1350 et seq. of this title, except as hereinafter provided;* (Emphasis added.)

⁸ OKLA. STAT. ANN. tit. 75, § 250 et seq. (West 2002). See *Toxic Waste Impact Group, Inc. v. Leavitt*, 1988 OK 20, 755 P.2d 626.

⁹ OKLA. STAT. ANN. tit. 68, § 1350 et seq. (West 2008).

¹⁰ OKLA. STAT. ANN. tit. 68, § 1352(22)(a) (West 2008):

“Sale” means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this paragraph, including but not limited to:

a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property,

...

¹¹ OKLA. STAT. ANN. tit. 68, § 1352(12) (West 2008).

¹² OKLA. STAT. ANN. tit. 68, § 1354(A)(1) (West 2008).

¹³ See Note 9, *supra*.

¹⁴ OKLA. STAT. ANN. tit. 68, §§ 1356(1) and 1356(10) (West Supp. 2012).

5. Section 1356(10) of Title 68¹⁵ (“Exemption”) states as follows, to-wit:

Sale of tangible personal property or services to any county, *municipality*, rural water district, public school district, the institutions of The Oklahoma State System of Higher Education, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, City of Tulsa-Rogers County Port Authority, Muskogee City-County Port Authority, the Oklahoma Department of Veterans Affairs, the Broken Bow Economic Development Authority, Ardmore Development Authority, Durant Industrial Authority, Oklahoma Ordnance Works Authority, Central Oklahoma Master Conservancy District, Arbuckle Master Conservancy District, Fort Cobb Master Conservancy District, Foss Reservoir Master Conservancy District, Mountain Park Master Conservancy District, Waurika Lake Master Conservancy District, Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs *or to any person*¹⁶ *with whom any of the above-named subdivisions or agencies of this state has duly entered into a public contract pursuant to law, necessary for carrying out such public contract or to any subcontractor to such a public contract.* Any person making purchases on behalf of such subdivision or agency of this state shall certify, in writing, on the copy of the invoice or sales ticket to be retained by the vendor that the purchases are made for and on behalf of such subdivision or agency of this state and set out the name of such public subdivision or agency. Any person who wrongfully or erroneously certifies that purchases are for any of the above-named subdivisions or agencies of this state or who otherwise violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount equal to double the amount of sales tax involved or incarcerated for not more than sixty (60) days or both;... (Emphasis added.)

6. The Tax Commission Rule (“Rule”)¹⁷ states in pertinent parts, as follows, to-wit:

(a) **Definition.** The term “**contractor**” as used in this Section means both contractors and subcontractors and includes, but is not limited to, building, grading and excavating, electrical, plumbing, heating, painting, drilling, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape, and roofing contractors. The term contractor also includes any person

¹⁵ OKLA. STAT. ANN. tit. 68, § 1356(10) (West Supp. 2012).

¹⁶ OKLA. STAT. ANN. tit. 25, § 16 (West 2008) states:

The word ‘person,’ except when used by way of contrast, includes not only human beings, but bodies politic or corporate.

¹⁷ OKLA. ADMIN. CODE §§ 710:65-19-56(a) and (c)(1) (June 25, 2009).

engaged in a contractual arrangement for the repair, alteration, improvement, remodeling or construction of real property. A person working for a salary or wage is not considered a contractor.

...

(c) **Exempt transactions.** A contractor may make purchases based upon the exempt status of another entity **only** in the statutorily-limited circumstances described in this Section:

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax. (Emphasis original.)

7. The Protestant is an agency of the political subdivisions of the State of Oklahoma.¹⁸

8. Goal of any inquiry into the meaning of a legislative act is to ascertain and give effect to the intent of the legislature. The law-making body is presumed to have expressed its intent in a statute's language and to have intended what the text expresses. Where a statute is plain and unambiguous, it will not be subject to judicial construction, but will be given the effect its language dictates. Only where the intent cannot be ascertained from a statute's text, as occurs when ambiguity or conflict with other statutes is shown to exist, may rules of statutory construction be employed.¹⁹

9. Tax exemptions, deductions, and credits depend entirely on legislative grace and are strictly construed against the exemption, deduction, or credit. Section 1355 of Title 68 is an exemption statute, not a tax levying statute; and as such, it must be strictly construed unless authority for the exemption is clearly expressed.²⁰

¹⁸ See OTC (Precedential) Order No. 1990-05-08-006 (May 8, 1990).

¹⁹ *Blitz U.S.A., Inc. v. Oklahoma Tax Com'n*, 2003 OK 50, 75 P.3d 883.

²⁰ *Id.*

10. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.²¹

11. Standing, as a jurisdictional question, may be correctly raised at any level of the judicial process or by the Court on its own motion. The Oklahoma Supreme Court has consistently held that standing to raise issues in a proceeding must be predicated on interest that is “direct, immediate and substantial.” Standing determines whether the person is the proper party to request adjudication of a certain issue and does not decide the issue itself. The key element is whether the party whose standing is challenged has sufficient interest or stake in the outcome.²²

PROTESTANT’S POSITION

The Protestant’s position is summarized,²³ as follows, to-wit:

Oklahoma law exempts municipalities from payment of sales tax for the sale of tangible personal property or services to them. 68 O.S. § 1356. Oklahoma law also ensures that when municipalities expend funds on projects for the construction of public buildings the exemption remains intact, by providing the exemption applies to the ‘[s]ale of tangible personal property or services to any...municipality...**or to any person with whom [the municipality]...has duly entered into a public contract** pursuant to law, necessary for carrying out such public contract. 68 O.S. § 1356(10) (emphasis added). Thus, when a municipality enters into a contract to construct public buildings pursuant to the PCBA, this exemption applies not only to sales directly to the municipality, but acquisitions on behalf of the municipality made by any person with whom the municipality has contracted to carry out the public contract. (Emphasis original.)

²¹ OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

...“preponderance of the evidence” means the evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

²² *Deutsche Bank National Trust Company v. Byrams*, 2012 OK 4, ___ P.3d ___.

²³ Protestant’s Brief at 3.

DIVISION'S POSITION

The Division responds in pertinent part, "It is Division's position that 68 O.S. 2011, § 1356(10) specifically lists the entities which are authorized to pass their sales tax exemption available to their contractors. Protestant is not specifically listed as an eligible entity in 68 O.S. 2011, § 1356(10). Neither is Protestant a municipality. Because Protestant is not a municipality or a listed entity, Division asserts that, as a matter of law, the Protestant's exemption cannot be passed through to Protestant's contractor."²⁴

DISCUSSION

The Protestant points out that "The Legislature's intent in authorizing and encouraging municipalities to work together through interlocal cooperation agreements could not be clearer."²⁵ Section 1001 of Title 74²⁶ states:

It is the purpose of Section 1001 et seq. of this title²⁷ to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. The cooperating governmental units can, if they deem it necessary, create an entity to carry out the cooperative functions.

The Protestant goes on to state, "Obviously, if municipalities were penalized because they joined together to cooperate through the ICA, the explicit purpose of the ICA to enable municipalities 'to make the most efficient use of their powers,' § 1001, would be defeated."²⁸ As the Protestant points out, "Through the [ICA], the Legislature has clearly and unequivocally expressed its intent to preserve, not defeat, municipalities' powers and privileges when they cooperate through an interlocal agreement."²⁹ In support of its position the Protestant cites to Section 1004 of Title 74,³⁰ which states as follows, to-wit:

²⁴ Division's Brief at 2.

²⁵ Protestant's Brief at 5.

²⁶ OKLA. STAT. ANN. tit. 74, § 1001 (West 2002).

²⁷ ICA.

²⁸ See Note 24, *supra*.

²⁹ Protestant's Brief at 4.

³⁰ OKLA. STAT. ANN. tit. 74, § 1004(A) (West Supp. 2012).

Any power or powers, privileges or authority exercised or capable of exercise by a public agency³¹ of this state may be exercised and enjoyed jointly with any other public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this act [ICA] upon a public agency.

“The Legislature has thus foreclosed any claim municipalities forfeit their powers or privileges when they join together through the ICA, broadly providing ‘**any** power or powers, privileges or authority exercised or capable of exercise’ by a municipality ‘may be exercised and enjoyed jointly.’”³² (Emphasis original.)

As concluded by the Tax Commission,³³ “Section 1 of title 25 of the Oklahoma Statutes provides that ‘words used in any statute are to be understood in their ordinary sense, except where a contrary intention plainly appears.’ This principle has been endorsed by the Oklahoma Supreme Court. In *Curtis v. Board of Education of Sayre Public Schools*, 914 P.2d 656³⁴ the Court held, ‘In the absence of a contrary definition, words in a statute are to be given to be given the same meaning as that attributed to them by ordinary and common definitions.’”

As noted by the Division in its Brief, OTC (Precedential) Order No. 1990-05-08-06 (May 8, 1990) did not decide the Protestant’s (predecessor’s) eligibility to the Exemption, but the Tax Commission’s reasoning is applicable in this matter. “Since legislation is never read in isolation, nor applied in a vacuum, there is a duty when construing a statute to do so harmoniously with other statutes, and in this instance, even though the relationship between the Oklahoma Sales Tax Code and the other Oklahoma Acts is not specific, it is reasonable to assume that an understanding and awareness of one Act would be influenced by awareness of the provisions of another.”³⁵

“Time and again, when the question arises as to the authority of an ICA entity – often through inquiry to the Oklahoma Attorney General – the answer is derived from examining the authority of the individual members of the interlocal unit.”³⁶

³¹ Municipalities are “public agencies” within the meaning of the ICA. See OKLA. STAT. ANN. tit. 74, § 1003(A)(1) (West 2002).

³² Protestant’s Brief at 5 through 6. (Emphasis original.) See Note 29, *supra*.

³³ OTC Order No. 2011-07-12-05 (July 12, 2011).

³⁴ *Curtis v. Board of Educ. of Sayre Public Schools*, 1995 OK 119, 914 P.2d 656.

³⁵ See Note 18.

³⁶ Protestant’s Brief at 6. *Id.* See 2006 AG 24, 2006 WL 2104266, 1986 OK AG 70, 1986 WL 235073. See also *Rollow v. West*, 1971 OK 3, 479 P.2d 962. (Other citations omitted.)

There does not appear to be any dispute that the Exemption would be available to an individual municipality. The Division's position is that the municipalities that comprise the PROTESTANT cannot pass their exemption from sales tax to their contractors through the PROTESTANT because the PROTESTANT is not one of the entities specifically listed in the Exemption. In support of its position, the Division cites Attorney General Opinion No. 07-31, which addresses if the Exemption "...exempts from sales taxation the sale of tangible personal property or services to the Oklahoma Department of Veterans Affairs, to any person who enters into a public contract with the Oklahoma Department of Veterans Affairs, or to any subcontractor to such a public contract. Does this exemption apply when the sale is to a person who has entered into a public contract with the Oklahoma Department of Central Services executed on behalf of the Oklahoma Department of Public Veterans Affairs?" It was the official opinion of the Attorney General in pertinent part as follows,³⁷ to-wit:

1. The sales tax exemption conferred by 68 O.S. Supp.2006, § 1356(10) on the sale of tangible personal property or services to any person who enters into a public contract with the Oklahoma Department of Veterans Affairs, or to any subcontractor to such a public contract, does not apply when the sale is to a person who has entered into a contract with the Oklahoma Department of Central Services executed on behalf of the Oklahoma Department of Veterans Affairs pursuant to 74 O.S. Supp.2006, § 85.4³⁸ or 61 O.S. Supp.2006, § 208(C).³⁹

...

In the opinion the Attorney General noted that control by the principal is an essential element of a principal/agent relationship and found that the Department of Central Services was not acting as an agent of the Department of Veterans Affairs when the Department of Central Services entered into a public construction contract on behalf of the Department of Veterans Affairs,⁴⁰ The present matter is distinguishable from the situation addressed in Attorney General Opinion No. 07-031. The Oklahoma Tax Commission has previously found, in Commission Order 90-05-08-006, that "Protestant is an agent of the municipalities of which it is comprised. . ." In that Order the Commission recognized the duty to construe the Oklahoma Sales Tax Code in harmony with other Oklahoma statutes.

³⁷ Okl. A.G. Opin. No. 07-31, 2007 WL 4699705 (Okl. A.G.). "In direct response to this Attorney General's Opinion, the Oklahoma Legislature amended the statute to allow the exemption to include "the Department of Central Services only when carrying out a public construction contract on behalf of the Department of Veterans Affairs." Division's Response at 6.

³⁸ *Id.* "The Oklahoma Central Purchasing Act," OKLA. STAT. ANN. tit. 74, § 85.1 *et seq.* (West 2002).

³⁹ "Public Building Construction and Planning Act," OKLA. STAT. ANN. tit. 61, § 201 *et seq.* (West 2010).

⁴⁰ See Note 36, *supra*.

In this matter the Protestant's position that "...the Legislature made its intent crystal clear in a single place – § 1004 – that as a matter of law, ICA entities' powers and privileges are co-extensive with those of its members"⁴¹ is more persuasive; otherwise, the Exemption and the Rule when read in conjunction with the ICA would lead to an absurd result.⁴²

The letter of protest in this matter provides in part:

[Protestant] seeks an order finding [protestant] exempt from sales tax pursuant to § 1356(10), and entitling [protestant] to a refund of all sales tax its contractors and subcontractors have paid pursuant to the public contract [protestant] has entered into for construction of an office building . . .

The issue of standing was not raised by the Division in this matter and was not addressed by the ALJ in his Findings, Conclusions and Recommendations. Nonetheless, standing is a jurisdictional question that may be raised by any party or by the Court sua sponte. The Oklahoma Supreme Court, in *Deutsche Bank National Trust Company v. Byrams*, 2012 OK 4, ____ P.3d ____, quoted its own previous opinions regarding standing.

Standing, as a jurisdictional question, may be correctly raised at any level of the judicial process or by the Court on its own motion. This Court has consistently held that standing to raise issues in a proceeding must be predicated on interest that is "direct, immediate and substantial." Standing determines whether the person is the proper party to request adjudication of a certain issue and does not decide the issue itself. The key element is whether the party whose standing is challenged has sufficient interest or stake in the outcome.

A determination that sales to its contractors are exempt from sales tax, would allow protestant to negotiate a lower construction price than if it failed to obtain such a determination.

The Oklahoma Supreme Court has indicated that standing exists if a party's interest is "direct, immediate and substantial." The legal determination of the exemption issue herein does have a direct and substantial impact on protestant's ability to negotiate a lower price on a public construction contract. We conclude that protestant does have standing to bring an action to determine whether sales to its contractors necessary to fulfill a public construction contract are exempt from sales tax.

Although the protestant, in its letter of protest, asks for an order entitling it to a refund of all the sales tax its contractors and subcontractors have paid, the parties have stipulated that the issue in these proceedings is whether PROTESTANT's contractor is entitled to make purchases exempt from sales tax pursuant to 68 O.S. § 1356(10).

⁴¹ Protestant's Reply at 3. See Notes 36 and 39, *supra*.

⁴² *Id.* See *Grand River Dam Authority v. State*, 1982 OK 60, 645 P.2d 1011. "Legislature will not be presumed to have intended an absurd result, and statutory construction which would lead to an absurdity will be avoided if this can be done without violating legislative intent."

ORDER

The protest to the determination that sales to protestant's contractors necessary to fulfill a public construction contract are not exempt from sales tax is sustained. As this is not a claim for refund, we do not decide Protestant's request for an order entitling it to a refund of all sales tax its contractors and subcontractors have paid pursuant to a public construction contract.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is "clear and unambiguous."